

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of Decision

: 30.3.90

P R E S E N T

HON'BLE SHRI N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO. 278/89

1. P.S Hameed Rawther
2. K.Sukumaran
3. B.Gopakumar
4. T.V.Prakasan
5. V.M.Varghese
6. T.V George
7. C.Rajamony
8. S.Ramanandan
9. C.G.Sahadevan
10. P.Vijaya Raj
11. T.V Gopalakrishnan
12. K.Gururaja Ugrani

.. Applicants

v.

1. Union of India, represented by
Secretary to Govt. of India,
Department of Space, Indian
Space Research Organisation,
Anthariksha Bhavan, New BEL Road,
Bangalore-560054.
2. The Chairman, ISRO, Anthariksha Bhavan,
New BEL Road, Bangalore-54.
3. Director, PP & PM, ISRO,
Anthariksha Bhavan, New BEL Road,
Bangalore-560054.
4. Director, VSSC,
Trivandrum -22.
5. Director, LPSC, Valiyamala,
Trivandrum-695547

.. Respondents

M/s. E.Subramoniam &
R.Sreekumar

.. Counsel for the
applicants

Mr.P.V Madhavan Nambiar,
SCGSC

.. Counsel for R1 to 4.

J U D G M E N T

Hon'ble Shri N.Dharmadan, Judicial Member

The applicants are diploma holders in engineering.
Except applicant Nos. 10 and 11, who are now working as
Engineer SC, all others are working in the cadre of

Engineer SB in the Indian Space Research Organisation (for short 'ISRO'), a unit of the Department of Space of Government of India. According to the applicants they are all eligible for promotion to the next higher grade, but their right to get early promotions is jeopardised by the recent revised O.M, Annexure 2, dated 29.3.89. It gives preferential treatment to engineering graduates. This is illegal and arbitrary. Hence they jointly filed this application under Section 19 of the Administrative Tribunals Act, 1985, for a direction to the respondents to apply the norms prescribed by this O.M, for promotion of the engineering graduates from Engineer SB grade to the higher grades, such as Engineers, SC, SD, SE and upwards, to the applicants also with the same review period.

2. The contention of the applicants in a nutshell is as follows. Prior to issuance of Annexure A-2 the engineering graduates and the engineering diploma holder in the grade of Engineer SB were uniformly treated. They were entitled ^{a review for} ~~for~~ promotion to SC grade on completion of three years service in SB grade. By Annexure A-2 O.M the respondents have unilaterally and arbitrarily reduced the review period to one year for promotion of graduates from SB grade to SC grade while retaining three year period for the diploma holders for getting the same promotion. According to the applicants in case this O.M is implemented by the respondents, several of their juniors who are degree holders and who are working along with the applicants as Engineer SB as well as Engineer SC will supersede the applicants and get promotion as Engineer SC and Engineer SD.

This will result in grave miscarriage of justice. In other words the officers from the two groups, i.e., diploma holders and engineering graduates are fused together in Engineer SB grade and they are all eligible for next promotion in terms of the existing rules but by the implementation of Annexure A-2 the engineering graduates are differentiated by giving preferential and earlier promotion over and above the applicants, who are diploma holders. Thus the revised O.M infringes the Fundamental Rights guaranteed to the applicants under Article 14 and 16 of the Constitution of India.

3. The relevant portions of Annexure A-2 are extracted below for easy reference:-

" The question of improving the career progression of the Engineering Graduates/M.Sc.(First Class) in ISRO/DOS and their induction level has been under active consideration for quite sometime now. A number of R&D organisations and government departments of late induct such personnel at 'SC' level straight away. They are also placed in 'SC' grade after a year's training. In ISRO/DOS, their induction since January 1976 has been in 'SB'/SA'C' grades respectively and on completion of three years, they are considered for review to 'SC' grade. After careful consideration of all aspects, it has been decided to modify the induction level and review period for Engineering Graduates/M.Sc.(First Class) as follows with effect from April 1, 1989.

<u>Qualification</u>	<u>Induction Level</u>	<u>Scale of pay</u>	<u>Review period for 'SC' Grade (subject to completion of probation)</u>
1. BEs/B.Techs/B.Sc (Engg)/Equivalent Engg qualification (First Class)	SB	Rs.2000-3500	One Year
2. M.Sc.(First Class)	SB	Rs.2000-3500	One Year

Consequently, all Engineering Graduates/M.Sc.(First Class) appointed hereafter to the grade of 'SB' will, on successful completion of the probation period of one year (extended period, wherever applicable), be reviewed for appointment to 'SC' grade on the rationalised date immediately after the successful

completion of probation, after undergoing the due procedures prescribed from time to time and reiterated in O.M No.HQ:ADMN:4.20(3) dated February 22, 1988. For easy reference, a statement showing the career progression of the Engineering degree/Post-graduates and higher qualifications under the periodical merit review scheme as proposed now is enclosed as Annexure-A to this OM".

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" The procedure laid down in this O.M regarding fitment/placement and consideration for review to the grades of 'SC'/'SD' of existing persons will not apply to such of those scientists/engineers who are presently in the grades of SA'C'/'SB'/'SC' who do not possess the qualification of B.E/B.Tech. M.Sc or equivalent academic qualifications recognised by the Department(all in First Class) and who have progressed in their career based on alternate qualification like B.Sc/Diploma, etc. They will continue to progress as per existing norms/orders on the subject."(emphasis added)

4. The allegations that the applicants have been treated equally with the degree holders and the two groups are normalised and integrated into a single unit, viz. Engineer SB or Engineer SC are denied by the respondents in the counter affidavit. But the indications in paras 1 and 4 of the impugned Annexure A-2 O.M and the statements in para 8 of the 1st counter affidavit extracted below lead to the inference that the degree holders and the diploma holders were treated equally in the grade of SB level:-

" The periodical reviews for promotions to the posts in the grade 'SB'(Rs.2000-3500/-) are conducted as of 1st April and 1st October and to 'SC' grade(Rs.2200-4000/-) and above as of 1st January and 1st July every year. During the periodical review, as of the above crucial dates, the cases of all eligible officials, whether they are Engineering Degree holders or not, but meeting the norms for promotion, would be taken up for review. It is, however, not true that the applicants are equated to Engineering Degree holders, just because they were being reviewed along with the Engineering Degree holders in the process on the basis of different norms. Also, the normalisation in the past, if any, as claimed by the applicants, was only to make them eligible to be considered for the appropriate higher grades as in the case of 1st Class Diploma holders".

5. Annexure 1 circular dated 11.1.83 states that at SB and higher levels there are four types of persons viz (i) those with First Class Degree/Diploma in the relevant area, (ii) those with other than First Class Degree/Diploma in the relevant area, (iii) those without any Degree/Diploma in the relevant area and who have in the past after review been allowed to cross over to SB grade and (iv) those who got promotion to SB grade after going through the category change under O.M dated 1.10.82. All these persons are considered for promotion using the same procedure without any manner of discrimination or differential treatment. Annexure 3 judgment of the Kerala High Court indicates that the distinction between the two groups was obliterated when the diploma holders were subjected to 'normalisation' in the lower post.

6. The applicants further rely on Annexures A5 to A11 produced along with the affidavit dated 28th February 1990 in support of their contention. These are advertisements issued by the respondents making both degree holders and diploma holders eligible for job; assigning same types of works to them after absorption in the service and transfer and posting made among them on the basis of free mobility and exchange of places as between Engineer SB and a diploma holder Engineer SB.

7. Even though there is denial of all these contentions raised by the applicants, by the respondents in their various reply statements, additional reply statements and affidavits, having perused the records and heard the arguments at length, we are satisfied that the diploma holders were treated at par with the degree holders upto Engineer SB grade in various respects. But Ann.A2

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makes a slight deviation. The degree holders are treated in a different manner. This is evident from the impugned O.M itself.

8. Justification offered by the respondents for this discriminatory treatment in their first reply affidavit reads as follows:-

" It is admitted that the Office memorandum No. HQ:ADMN:4.20(3)-1 of 29th March, 1989(Annexure R4) was issued revising the induction and career progression of Engineering Graduates/M.Sc. (I Class) in Indian Space Research Organisation (ISRO)/Department of Space(DOS). The compelling need to attract and retain the best talents among the Engineering Graduates/M.Sc. to take up the more complex and challenging jobs for achieving the objectives of the National Space Programme, had been receiving the attention of ISRO/DOS for a long time.(Briefly explained in the introduction). When compared to similar other establishments, ISRO/DOS was offering a lower grade to the Engineering Graduates".

9. The Supreme Court recently in Abdul Basheer v. Karunakaran, 1989(2) KLT SC 3 held that where the cadre of officers are effectively treated as equivalent for all material purposes no further distinction can be made between graduates and non graduates. Ordinarily it is for the Government to decide or lay down a policy in the interest of better administrative efficiency, but if it is found "to be of no relevance to the object of the measure framed by the Govt. it is always open to the Court to strike down the differentiation as being violative of Art. 14 and 16 of the Constitution."

10. Thus in the case on hand the unilateral revision and reduction of period of experience from three years to one year for promotion of degree holders alone from Engineer SB grade to Engineer SC grade, retaining the three year period for diploma holders can be quashed if the decision is proved to be not relevant

to the object sought to be achieved, because it will result in supersession of the applicants and violation of their rights. Of course the required experience can be treated as part of educational qualification underlying a policy formulated on the basis of the recommendations of an expert body. Engineering graduates will get preference and earlier promotion if Annexure A2 is implemented and it would block or at least reduce the chance of further promotion of diploma holders in their line, as contended by them. But if this reduction of period of experience for giving preferential treatment has been effected treating the experience in the concerned service as part of educational qualifications on the basis of the recommendations of an expert body constituted in this behalf or by the Govt. itself, it cannot be assailed by the diploma holders.

11. The Supreme Court in *Roshan Lal Tandon v. Union of India* (AIR 1967 SC 1889) held that when direct recruits and promotees were brought into Grade D to form an integrated class, no preference could thereafter be recognised in favour of one of the classes, in the matter of further promotion to Group C as that would amount to discrimination under Article 14 and 16 of the Constitution of India. In a subsequent case, *State of Jammu & Kashmir v. Triloki Nath Khosa and others* (AIR 1974 SC 1) the Supreme Court explained and mitigated the rigor of the above principle, considering the dispute between the degree holders and the diploma holders ^{and} held as follows:-

"38. Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis or whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or

mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object.

39. Judged from this point of view, it seems to us impossible to accept the respondents' submission that the classification of Assistant Engineers into Degree-holders and Diploma-holders rests on any unreal or unreasonable basis. The classification, according to the appellant, was made with a view to achieving administrative efficiency in the Engineering services. If this be the object, the classification is ~~clearly~~ correlated to it for higher educational qualifications are at least presumptive evidence of a higher mental equipment".

12. Justice Madhava Reddy, the Chairman of the Central Administrative Tribunal, as he then was, after discussing the issue at length in the light of various decisions of the Supreme Court, in the case reported in P.N Kohli v. Union of India and others, ATR 1987 (2) CAT 172 held as follows:-

"If prescribing a higher educational qualification for the purpose of promotion to the next category of service is not bad as held in Khosa's case, equally prescribing a longer period of service for those possessing a lesser educational qualification in the matter of promotion and prescribing a qualifying examination in our opinion, cannot be deemed arbitrary and violative of Art. 14 and 16 of the Constitution".

13. The Supreme Court very recently in Roopchand Adlakha and others v. Delhi Development Authority and others, AIR 1989 SC 309 endorsed the above view of the Central Administrative Tribunal and held as follows:-

" The idea of equality in the matter of promotion can be predicated only when the candidates for promotion are drawn from the same source. If the differences in the qualification has a reasonable relation to the nature of duties and responsibilities, that go with and are attendant upon the promotional-post, the more advantageous treatment of those who possess higher technical qualifications can be legitimised on the doctrine of classification. There may, conceivably, be cases where the differences in the educational qualifications may not be sufficient to give any preferential treatment to one class of candidates as against

another. Whether the classification is reasonable or not must, therefore, necessarily depend upon facts of each case and the circumstances obtaining at the relevant time"

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"In Triloki Nath's case diploma-holders were not considered eligible for promotion to the higher post. Hence, in the present case, the possession of a diploma, by itself and without more, does not confer eligibility. Diploma, for purposes of promotion, is not considered equivalent to the degree. This is the point of distinction in the situations in the two cases. If Diploma-Holders - of course on the justification of the job requirements and in the interest of maintaining a certain quality of technical expertise in the cadre - could validly be excluded from the eligibility for promotion to the higher cadre, it does not necessarily follow as an inevitable corollary that the choice of the recruitment policy is limited only to two choices, namely, either to consider them "eligible" or "not eligible". State, consistent with the requirements of the promotional-posts and in the interest of the efficiency of the service, is not precluded from conferring eligibility on Diploma-holders conditioning it by other requirements which may, as here, include certain quantum of service-experience".

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" This does not prevent the State from formulating a policy which prescribes as an essential part of the conditions for the very eligibility that the candidate must have a particular qualification plus a stipulated quantum of service-experience. It is stated that on the basis of the "Vaish-Committee" report, the authorities considered the infusion of higher academic and technical quality in the personnel requirements in the relevant cadres of Engineering Services necessary. These are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial-restraint. The prescriptions may be somewhat cumbersome or produce some hardship in their application in some individual cases; but they cannot be struck down as unreasonable, capricious or arbitrary. The High Court, in our opinion, was not justified in striking down the Rules as violative of Arts. 14 and 16".

14. Again the Supreme Court observed in^a case reported in State of Andhra Pradesh and another v. V.Sadanandan and others etc, AIR 1989 SC 2060, as follows:-

" It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are matters of policy decision falling exclusively within the purview of the executive. As already stated, the question of filling up of posts by persons belonging to other local categories or zones is a matter of administrative necessity and exigency. When the Rules provide for such transfers being effected and when the transfers are not assailed on the ground of arbitrariness or discrimination, the policy of transfer adopted by the Government cannot be struck down by Tribunals or Courts of Law".

15. The law is now very clear. When the employer ^{after} on the basis of the requirements/considering the recommendations of the expert committee makes a change in the policy of selection ~~either~~ by prescribing educational qualification with experience presumably connected with the qualification in the particular branch or category, the Court or the Tribunal shall not sit in judgment over such decisions which are being taken having regard to the nature of the job requirements and necessity at the relevant time of selection in the particular establishment.

16. In this background the problem that arises for consideration is whether the decision of the respondent in having reduced the review period of three years experience to one year for promotion to Engineer SC grade from Engineer SB grade ^{to} the degree holders, retaining the same period of three years for getting promotion to diploma holders, is sustainable especially when degree holders and diploma holders were equated in Engineer SB grade?

17. The respondents in the counter affidavit after explaining the importance of maintaining very high standard in the matter of absorption of engineers in ISRO, stated that the department had a thorough look

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at the induction levels of Scientists/Engineers whose brain power is the most critical element in the successful design, development, fabrication and utilisation of the technology in the relevant area of Space Science for natural development. So having regard to the special nature of the establishment, high degree of proficiency, creativity and managerial skill is required on the part of the employees to execute the complex jobs for obtaining the achievable targets on research and development in ISRO. Hence, according to the respondents, the organisation had by the impugned O.M only revised the norms for induction of Engineering Degree holders/M.Sc.s after detailed deliberations to meet the requirements for the rapid development of the Space Science Programme.

18. In the second additional counter affidavit filed by the respondents they have referred to the suggestions of Late Dr.Homi Bhabha and Dr.Vikram Sarabhai 'to reorganise the scientific and technical personnel pattern and growth' in this organisation. They have also produced Annexure R-6 and R7 Office Memorandum dated 28th May, 1986 dealing with the proposal to bring about changes in the finance procedure, personnel policy, procurement management system etc. and the yearwise break up of Scientists/Engineers recruited in SB,SC and SD grade respectively. It was further stated that an expert committee was appointed in November, 1985 by the Chairman of ISRO for examining in detail about the appointments to various posts and framing respective qualifications. The Committee had suggested that the engineering graduates could be given a review from SB to SC within two years instead of three years. It was after considering the issue at various levels that they have decided to appoint

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the Engineering Graduates/Post Graduates in Science, for promotion ✓
to SB grade and review them/ to SC grade after one year of
satisfactory service and after five years in SB/SC grade
to SD grade.

19. At the time of hearing before the close of the arguments the learned Central Govt. Counsel placed before us two 'confidential' documents viz. (i) Report of the Committee appointed by the Chairman, ISRO to review the ISRO norms and career opportunities for S&T staff dated 21.7.86 and (2) The statement containing the consensus arrived at the 'Centre Directors' of ISRO, on the induction of engineering graduates in ISRO/DOS Centres/Units. The relevant portions from the former read as follows:-

"However, keeping in view the fact that in most of the Organisations, Engineering graduates are appointed at the level of SC, it is felt that the present review period of 3 years from SB to SC for Engineering graduates may be brought down to two years".

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"The recommendation is also consistent with the philosophy of Dr Bhabha and Dr Sarabhai who felt that Scientists and Engineers should be given same opportunities as other services (at least upto a certain level), so that the organisation will be in a position to attract good Scientists and Engineers and retain them by rewarding their good work. However, the Committee recommends stricter reviews beyond SF grade".

The following portions from the latter document is also relevant:-

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" The matter has been under consideration for quite sometime. The issue came up in the ISRO Council also. The Committee headed by Shri N.Pant was appointed to look into the entire issue of career opportunities of the Scientific and Technical staff. The Committee, after consideration of all aspects, recommended that the review period of Engineering graduates taken at SB level may be reduced from 3 years to 2 years. This was considered and the matter again came up in various discussions. There was a strong feeling that we should take immediate steps to improve the career prospects of the Engineering graduates and M.Sc.s to attract better talents. The issue was studied in depth after collecting the details from various similar/comparable Organisation".

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" In the light of the above, the matter was further considered by Chairman, ISRO in consultation with senior officers and it has been decided to go in for Option 1. In brief, the career progression of M.Sc(s and equivalent) /Engg. graduates(1st class) in ISRO/DOS will be as follows:

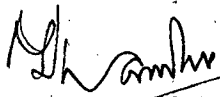
Induction	at SB
+ 1	SC
+ 5	SD
+ 9	SE
+13	SF "

The applicants' counsel was also given facilities to go through these documents and make his submissions.

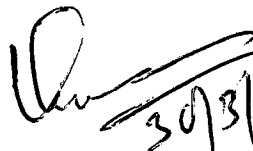
20. After careful consideration of these documents in the light of the principles laid down by the Supreme Court we are of the view that there is no force in the argument of the applicants that the norms laid down in Annexure A-2 dated 29.3.89 for promotion from SB grade to Engineer SC grade, SD grade are violative of their Fundamental Rights.

21. The respondents have studied the matter in depth by constituting an expert committee and after discussing the issue at various levels including 'Centre Directors' of ISRO that they had decided to issue Annexure A2. ^{it was} Thus ^{was} only after a consensus arrived at the highest level about the fixation of qualification for selection and promotion that they had issued the impugned O.M. Whether this is conducive to the better administrative efficiency of the organisation or whether this would produce the desired effect or not are all matters for the respondents to decide. However we are of the view that we cannot sit in judgment over the decisions rendered by the respondents on the basis of the recommendations of the expert body constituted in this behalf.

22. After bestowing our dispassionate consideration of the matter we find ourselves left with no other alternative, but to dismiss this application and we do so. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

30.3.90


(N.V KRISHNAN)
ADMINISTRATIVE MEMBER

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